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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Deployment of Wireline Services Offering )  
Advanced Telecommunications Capability )

CC Docket No. 98-147

COMMENTS OF CABLE & WIRELESS, INC.

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September 25, 1998

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### SUMMARY

CWI applauds the Commission's efforts to create a regulatory regime conducive to the rapid development and deployment of advanced telecommunications services to the public, and generally believes that the measures proposed in the *NPRM* represent an excellent means of accomplishing that goal.

CWI supports the FCC's proposals for the establishment of an optional alternative pathway for ILECs that would allow separate affiliates to provide advanced services free from ILEC regulation. However, CWI urges the Commission to ensure that the separation and nondiscrimination rules it adopts to structure the relationship between the ILEC and its affiliate are clearly articulated, rigorously implemented, and zealously enforced. The Commission must guarantee that the advanced services affiliate is truly separate from the ILEC -- that is, that the affiliate operates independently from the ILEC parent or sibling and receives no unfair advantages as a result of their relationship -- if the agency's proposals are to lead to achievement of its procompetitive goals.

In addition, CWI believes that the Commission's tentative conclusions regarding revisions to its existing collocation and local loop requirements, and to its LEC resale obligations, will help to ensure greater access by competitive carriers to essential ILEC network equipment and facilities. The FCC's proposed measures in this regard thus will encourage the rapid development and deployment of advanced services in the local markets, which should then invigorate the growth of competition in the basic local exchange markets.

Finally, CWI urges the Commission to refrain from granting the BOCs relief from the interLATA restrictions imposed on them by the 1996 Act. CWI continues to believe that any modification of LATA boundaries, unless for the certain and similar limited purposes already

approved by the Commission on a case-by-case basis, is unwarranted at this time and would only increase the incentives of the BOCs to continue their tactics of delay regarding implementation of the essential market opening provisions of Sections 251 and 271 of the Act.

## TABLE OF CONTENTS

SUMMARY.....	i
TABLE OF CONTENTS.....	iii
INTRODUCTION .....	1
I. STRUCTURAL SEPARATION AND NONDISCRIMINATION RULES FOR ILEC ADVANCED AFFILIATES MUST BE IMPLEMENTED AND ENFORCED RIGOROUSLY.....	2
A. The FCC Must Adopt Rigorous "Bright Line" Structural Separation Rules To Ensure Truly Independent Operation Of The Affiliate.....	5
B. The Proposed Nondiscrimination Rules Must Be Strengthened.....	7
C. The Same Structural Separation Rules Should Apply Equally And Indefinitely To All ILEC Affiliates .....	8
II. THE COMMISSION SHOULD ADOPT NATIONAL COLLOCATION STANDARDS .....	9
A. ILECS Must Be Prohibited From Imposing Anticompetitive And Unnecessary Restrictions Regarding Collocated Equipment.....	10
B. ILECS Must Not Be Permitted To Deny Competitors Reasonable And Efficient Access To Collocation Space .....	11
III. THE COMMISSION MUST ENSURE THAT COMPETITIVE PROVIDERS HAVE ADEQUATE AND EQUAL ACCESS TO ALL LOCAL LOOPS .....	13
A. ILECs Must Be Required To Provide To Competitors Nondiscriminatory And Detailed OSS Information Regarding Loops.....	14
B. The Commission Should Expand ILEC Requirements Regarding Loop Unbundling .....	15
IV. ALL ADVANCED SERVICES SHOULD BE MADE AVAILABLE FOR RESALE.....	16
V. THE COMMISSION SHOULD NOT AT THIS TIME GRANT THE BOCS INTERLATA RELIEF .....	17
CONCLUSION.....	19

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To: The Commission

**COMMENTS OF CABLE & WIRELESS, INC.**

Cable & Wireless, Inc. ("CWI"), by its attorneys, hereby submits the following Comments in response to the *Notice of Proposed Rulemaking* portion of the Commission's *Memorandum Opinion and Order, and Notice of Proposed Rulemaking* issued in the above-captioned proceeding.<sup>1</sup>

**INTRODUCTION**

CWI, one of the largest long distance carriers in the United States, offers a full range of domestic and international voice, data, and messaging services. In addition, as a result of the recent acquisition of the Internet business of MCI Communications Corporation, CWI has become a major retailer and wholesaler of Internet services and access. Indeed, CWI is now the second largest Internet backbone provider in the United States -- and possibly the largest

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<sup>1</sup> *In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability, et al.*, CC Docket Nos. 98-147 *et al.*, FCC 98-188 (rel. August 7, 1998) ("NPRM").

provider of Internet traffic in the world. As a preeminent long distance and Internet services provider with ongoing plans to integrate and upgrade its networks, CWI is intensely interested in the outcome of this proceeding.

CWI applauds the FCC's efforts to create a regulatory regime conducive to the rapid development and deployment of advanced telecommunications services to the public. In CWI's view, the touchstone of such policies always should be the promotion of competition through removal of barriers to entry, whether created by government regulation or by private interests.

In general, CWI supports the Comments filed today by the principal industry association for competitive telecommunications service providers, the Competitive Telecommunications Association ("CompTel").<sup>2</sup> CWI is a member of CompTel and serves on its Board of Directors. CWI also offers the following specific comments on some of the issues raised in the *NPRM* which are of particular concern to CWI.

**I. STRUCTURAL SEPARATION AND NONDISCRIMINATION RULES FOR ILEC ADVANCED SERVICES AFFILIATES MUST BE IMPLEMENTED AND ENFORCED RIGOROUSLY.**

In the *NPRM* the Commission has determined that in order to promote innovation and investment by all participants in the telecommunications marketplace, and to stimulate competition for all services, it is necessary to create an "optional alternative pathway" for incumbent local exchange carriers ("ILECs") that would permit them to establish affiliates to

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<sup>2</sup> In particular, CWI agrees with CompTel's position that the FCC has no legal authority to release ILEC advanced services affiliates from the requirements of Section 251(c). Rather than discussing this position here in detail, however, CWI refers the Commission to CompTel's Comments.

provide advanced services free from ILEC regulation.<sup>3</sup> The FCC's theory is that ILECs would be encouraged to invest in advanced services networks held by separate affiliates because those networks would not be subject to the interconnection, resale, or unbundling requirements of Section 251(c).<sup>4</sup> Although free from the more burdensome obligations imposed on ILECs, these advanced services affiliates would of course still remain subject to the requirements of Sections 251(a) and (b),<sup>5</sup> and hence competitive providers also would have access to the newly available advanced network capabilities.

The Commission's proposal is based on the definitional fact that, as the agency notes, the obligations of Section 251(c) apply only to ILECs.<sup>6</sup> The Telecommunications Act of 1996 ("1996 Act") defines an ILEC as a member of NFCA on the date of the 1996 Act's enactment -- which clearly would not include an affiliate formed as a result of this proceeding.<sup>7</sup> As the FCC has acknowledged, however, Section 251 also includes as an ILEC any entity that is a "successor or assign" of the ILEC<sup>8</sup> or is a "comparable carrier" to the ILEC.<sup>9</sup> Thus, an advanced services affiliate will be subjected to the ILEC obligations of Section 251(c) if it is a "successor or assign" or a "comparable carrier."<sup>10</sup> The Commission has concluded that in order to avoid

<sup>3</sup> *NPRM* at ¶ 83.

<sup>4</sup> 47 U.S.C. § 251(c)

<sup>5</sup> 47 U.S.C. § 251(a), (b).

<sup>6</sup> *NPRM* at ¶ 89.

<sup>7</sup> 47 U.S.C. § 251(h)(1)(B)(i); *NPRM* at ¶ 90.

<sup>8</sup> 47 U.S.C. § 251(h)(1)(B)(ii); *NPRM* at ¶ 90.

<sup>9</sup> 47 U.S.C. § 251(h)(2); *NPRM* at ¶ 91.

<sup>10</sup> CWI notes that although the Commission has recognized that an advanced services affiliate will be deemed an ILEC if it is either a "successor or assign" or a "comparable carrier," throughout the *NPRM* the Commission focuses its analysis exclusively on the circumstances under which the affiliate becomes a successor or assign. CWI urges the

(continued...)

classification as a "successor or assign," the advanced services affiliate must be "truly separate" from the ILEC.<sup>11</sup> A "truly separate" advanced services affiliate, in turn, "must function just like any other competitive LEC and not derive any unfair advantages from the incumbent LEC."<sup>12</sup>

CWI agrees that, in theory, a fully separate affiliate of an ILEC should have no unfair advantage over other competitors, and, therefore, should be regulated no differently. Obviously, however, the key to the success of any such plan is the efficacy of the separation and nondiscrimination requirements imposed on the ILEC and its affiliate, and the diligence with which they are enforced. Without careful implementation, and, possibly, zealous state and federal oversight, sound economic theory can prove to be a very slippery slope in practice.

The Commission tentatively has concluded that if an ILEC wishes to embark along the alternative pathway contemplated in the *NPRM*, it must establish its affiliate in compliance with the following seven "structural separation and nondiscrimination requirements."<sup>13</sup>

First, the ILEC must "operate independently" from its affiliate.

Second, transactions between the ILEC and its affiliate must be on an arm's length basis, reduced to writing, and made available for public inspection.

Third, the ILEC and its affiliate must maintain separate books, records, and accounts.

Fourth, the ILEC and its affiliate must have separate officers, directors, and accounts.

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(...continued)

Commission not to neglect the status of comparable carriers in any order growing out of this rulemaking.

<sup>11</sup> *NPRM* at ¶ 83.

<sup>12</sup> *Id.* at ¶ 87.

<sup>13</sup> *Id.* at ¶ 96.

Fifth, the affiliate must not obtain credit under any arrangement that would permit a creditor, upon default, to have recourse to the assets of the ILEC.

Sixth, the ILEC must not discriminate in favor of its affiliate in the provision of goods, services, facilities or information, or in the establishment of standards.

Seventh, an advanced services affiliate must interconnect with the ILEC pursuant to tariff or pursuant to an interconnection agreement, and whatever network elements, facilities, interfaces, and systems are provided by the ILEC to the affiliate must also be made available to unaffiliated entities.

CWI generally believes that these seven requirements, if properly interpreted, enforced, and monitored, might accomplish the FCC's goals. However, CWI submits that, as discussed below, certain of the separation and nondiscrimination requirements must be strengthened in order to ensure that ILEC advanced services affiliates really are established and maintained on a truly separate basis.

**A. The FCC Must Adopt Rigorous "Bright Line" Structural Separation Rules To Ensure Truly Independent Operation Of The Affiliate.**

Perhaps the keystone to true separation between the ILEC and its advanced services affiliate is the requirement that they "operate independently" of each other. The Commission has suggested that to achieve operational independence the ILEC and its affiliate may not jointly own switching facilities or the land and buildings on which such facilities are located, and, further, that the ILEC "may not perform operating, installation, or maintenance functions for the affiliate."<sup>14</sup> Although CWI agrees that these proposals are essential in order for the affiliate to operate with any independence at all, CWI submits that additional and more restrictive

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<sup>14</sup> *NPRM* at ¶ 96.

requirements are necessary. The ILEC affiliate should not have access to any items or support from its ILEC parent or sibling not equally available to its competitors.

Specifically, for example, ownership restrictions should not be limited to facilities, land, and buildings associated only with switching equipment. Quite simply, the FCC should prohibit joint ownership of *any* telecommunications facilities or equipment, and of any interest in real property or physical space. Regardless of the nature of the ILEC asset involved, the affiliate would gain an advantage as a result of its relationship with its ILEC parent or sibling that would not be available to competitors. Similarly, in addition to barring shared operating, installation, and maintenance functions, the FCC should forbid joint use of all administrative and support functions, including payroll, procurement, personnel, legal, marketing, and the like. Flat, bright-line prohibitions such as these suggested are the only means of coming close to guaranteeing against anticompetitive intermingling of operations. CWI also would note that such indiscriminate prohibitions are far easier to police than are selective ones.

On a related note, the Commission generally has asked for comment regarding the kinds of transactions between the ILEC and its affiliate that would eviscerate operational independence and transform the affiliate into an assign of the ILEC thereby subjecting the affiliate to the ILEC obligations of Section 251(c).<sup>15</sup> CWI submits that transfers of *any* assets of *any* kind would make an affiliate an assign of the ILEC. Accordingly, CWI certainly agrees that, as proposed by the FCC, a wholesale transfer of essential network elements used to provide advanced services

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<sup>15</sup> *NPRM* at ¶¶ 105-07.

would qualify the affiliate as an assign,<sup>16</sup> as would the transfer of local loops.<sup>17</sup>

In addition, however, any other transfer of equipment, facilities, real estate, information (including customer proprietary network information), personnel, brand names, or any other asset of the ILEC, regardless of whether the asset is located on the ILEC's or the affiliate's premises, must subject the affiliate to ILEC regulation. CWI would remind the Commission that one of its stated interests in this proceeding is that rules must be adopted that will ensure that the advanced services affiliate operates in the local exchange exactly as would a CLEC. It strikes CWI as a truism that no advanced services affiliate could function like a CLEC if the ILEC were to create the affiliate from the ground up with its own equipment or facilities, or to facilitate the affiliate's establishment with any revenues attributable to incumbency.

**B. The Proposed Nondiscrimination Rules Must Be Strengthened.**

The inclusive definitions of Section 251(h) reflect the very real anticompetitive dangers inherent in the relationship between an ILEC and its affiliates. CWI is concerned that, regardless of the rigorousness of any structural separation rules adopted in this proceeding, it may be virtually impossible to ensure that the ILEC is precluded from being in a position to exploit its market power to the advantage of its advanced services affiliate. Moreover, the Commission must not neglect the possibility that the affiliate will discriminate in favor of its ILEC parent or sibling. Discrimination flowing from the affiliate to the ILEC would of course have the same detrimental impact on competition in the local market.

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<sup>16</sup> *NPRM* at ¶ 106.

<sup>17</sup> *Id.* at ¶ 107.

CWI simply is uncertain precisely how -- or if -- the Commission could prevent improper anticompetitive transactions or transfers between the two. However, one additional measure that the FCC could adopt to *strengthen* its proposed nondiscrimination rules is to make them reciprocal. The general nondiscrimination requirement, as currently written, merely prohibits the ILEC from discriminating in favor of its affiliate. The FCC also should prohibit the advanced services affiliate from discriminating in favor of its ILEC parent or sibling.

In addition, the Commission should extend this reciprocity requirement to its proposed affiliate transaction rules. The Commission must ensure to the greatest possible extent that neither entity is able to evade its statutory obligations as a result of its relationship with the other.

**C. The Same Structural Separation Rules Should Apply Equally And Indefinitely To All ILEC Affiliates.**

The Commission has requested that parties comment on whether the same separation rules should apply to all ILEC affiliates, whatever the size of the associated ILEC.<sup>18</sup> CWI submits that the principle goal of ensuring that all advanced services affiliates are treated exactly as competitive providers mandates that any separation requirements be applicable to all advanced services providers. Accordingly, the Commission must not adopt any kind of *de minimis* exception for either small or rural ILECs.

In addition, and for similar reasons, the Commission should not now adopt a provision permitting structural separation requirements to sunset after a certain time. An affiliate of an ILEC remains an affiliate of an ILEC, with the same access to the ILEC's assets, regardless of

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<sup>18</sup> *NPRM* at ¶ 98.

the amount of time the affiliate has been operational. Moreover, the Commission has no way of predicting whether the proposal to permit the establishment of separate ILEC advanced services affiliates will accomplish its goals. In the event that the FCC is successful in opening the local markets to competition, with regard to both basic exchange and advanced services, the Commission at that time could revisit this issue.

## **II. THE COMMISSION SHOULD ADOPT NATIONAL COLLOCATION STANDARDS.**

One of the most significant hurdles to entry into the local markets faced by competitors is their frustrating inability to arrange reasonable and timely collocation arrangements with the ILECs. Accordingly, CWI urges the Commission to exercise its authority to establish additional national rules for collocation pursuant to Sections 201 and 251.<sup>19</sup> CWI believes, as the Commission has suggested, that the adoption of "uniform national standards" would "encourage the deployment of advanced services by increasing the "predictability and certainty" with which competitors can expect to achieve collocation arrangements with ILECs.<sup>20</sup> By curbing their ability to engage in anticompetitive behavior -- particularly with regard to equipment and space - - clear and enforceable national standards will help to erode the ILECs' overwhelming competitive advantage over competitors in the local markets.

In addition, CWI believes that national uniformity of collocation standards would facilitate entry into the local markets by competitors providing both advanced and basic exchange services in multiple states across the country. Uniformity of collocation rules will

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<sup>19</sup> 47 U.S.C. §§ 201, 251.

<sup>20</sup> *NPRM* at ¶ 123.

eliminate many of the arcane and inconsistent state rules that may serve to discourage the growth of competition in the local markets.

**A. ILECs Must Be Prohibited From Imposing Anticompetitive and Unnecessary Restrictions Regarding Collocated Equipment.**

The FCC tentatively has concluded that ILECs "should not be permitted to impede carriers from offering advanced services by imposing unnecessary restrictions on the type of equipment that competing carriers may collocate."<sup>21</sup> CWI enthusiastically concurs. As the Commission has recognized, the current trend in manufacture of telecommunications equipment is the integration of multiple functions into one facility.<sup>22</sup> This has had and will continue to have a positive effect on competition: as the Commission notes, equipment integration has reduced costs, promoted efficient network design, and expanded the ranges of possible service offerings.<sup>23</sup> It has been CWI's experience, however, that ILECs have been refusing to permit competitors to collocate certain technologically advanced equipment -- particularly if that equipment also performs switching functions. In CWI's view, this behavior directly contravenes the ILECs' statutory obligation to offer cost efficient and flexible collocation arrangements.<sup>24</sup>

In order to combat this blatantly anticompetitive ILEC behavior, the FCC must require the ILECs to allow competitors to collocate *all* types of equipment, regardless of functionality. As discussed above in the context of separation requirements, the FCC should rely on inclusive

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<sup>21</sup> *NPRM* at ¶ 129.

<sup>22</sup> *Id.* at ¶ 128.

<sup>23</sup> *Id.*

<sup>24</sup> 47 U.S.C. § 251(c)(6).

bright-line requirements as a means of ensuring that ILECs have as little opportunity as possible to evade their procompetitive statutory and regulatory obligations. The *only* permissible restriction on collocated equipment should be a requirement that it not compromise the technological integrity of the ILEC's network. In order to ensure that the ILECs do not abuse this exception, however, any claim that any equipment does not meet the ILEC's safety requirements must be reviewed carefully.

In addition, and to effectuate this proposed rule, the Commission should expressly mandate that if an ILEC chooses to take advantage of the relaxed regulation discussed earlier and establishes an advanced services affiliate, the ILEC must accord competitors the same collocation terms and conditions offered to the affiliate. This simply is a restatement of the ILECs' existing obligation to provide collocation on nondiscriminatory terms and conditions, and is of course consistent with the general approach of this *NPRM*.

**B. ILECs Must Not Be Permitted To Deny Competitors Reasonable And Efficient Access To Collocation Space.**

As has been their tactic with equipment, CWI has found that ILECs have been engaging in anticompetitive behavior by imposing substantial costs and delays on competitors for space and construction of collocation cages. The situation is of course exacerbated by the inescapable fact that space for physical collocation in ILEC premises is extremely limited. In order to address these problems, the Commission has suggested that ILECs be required to offer competitors collocation arrangements that include: (1) the use of shared collocation cages, within which the equipment of multiple competitors could be "openly accessible or locked within a secure cabinet"; (2) the option to request collocation cages of any size, without any

minimum size requirement, so that competitors will not be forced to use *and pay for* more space than they need; and (3) the option of cageless collocation.<sup>25</sup>

CWI believes that the FCC should adopt these excellent proposals. In general, the Commission's suggestions promote a more efficient use of collocation space, which will allow increasing numbers of competitors to take advantage of collocation as an option for providing service. This will, as the Commission has concluded, facilitate the deployment of advanced services throughout the country and enable the agency to accomplish its stated goals in this proceeding.<sup>26</sup> More specifically, although CWI believes that each of these proposals is worthwhile, CWI emphasizes that it is essential that the Commission require ILECs to provide the option of cageless collocation. Of the three proposals, cageless collocation offers by far the most efficient and attractive use of collocation space, and, indeed, is fast becoming the standard for collocation. CWI submits that the Commission should encourage the continued use of these efficient, and therefore procompetitive, means of increasing access to both the local voice and data markets.

CWI recognizes that ILECs have legitimate interests in requiring the inclusion of reasonable security provisions in their collocation agreements, particularly with regard to access by competitors to their premises. However, such access also is an essential component of a competitor's ability to provide full service to its customers. The ILECs would appear to be fully aware of this, and, accordingly, consistently deny competitors -- including CWI -- necessary access to their collocated equipment. CWI has found, for example, that ILECs are limiting

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<sup>25</sup> *NPRM* at ¶ 137.

<sup>26</sup> *Id.* at ¶ 138.

access to the ILEC's premises to normal business hours. This policy has proven to be a significant problem, particularly when subscribers "inconveniently" experience service failures during other than those business hours. Again, this policy, and others like it, appear to be directed primarily at interfering with the relationship between competitors and their customers. Any rules the Commission adopts must include a requirement that ILECs provide competitors with access to their premises when necessary to perform such essential service support functions.

Finally, CWI agrees that it is necessary for the Commission to address the "entry barrier" posed by often substantial delays between orders placed by competitors for, and provision by ILECs of, collocation space.<sup>27</sup> CWI submits that, as has been suggested, the Commission should establish presumptively reasonable deployment intervals both for new collocation arrangements and modification of existing arrangements. Specifically, the FCC should fix specific intervals within which the ILEC must provide competitors both with collocation availability and prices, and with collocation space. Again, unless the Commission acts to curb the ILECs' anticompetitive behavior, they will continue their pattern of unreasonably delaying and impeding the expansion of the business activities of their competitors.

### **III. THE COMMISSION MUST ENSURE THAT COMPETITIVE PROVIDERS HAVE ADEQUATE AND EQUAL ACCESS TO ALL LOCAL LOOPS.**

As discussed above in connection with the establishment of minimum national standards for collocation, CWI believes that national standards regarding access to local loops will facilitate the growth of competition in the various local advanced services markets. Specifically,

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<sup>27</sup> *NPRM* at ¶ 144.

CWI submits that the FCC must act pursuant to the authority granted it by Sections 201 and 251 to ensure that competitive advanced services providers have, on a national level, ready access to xDSL-compatible loops in order to offer the full range of existing and future advanced services that consumers now and will demand.

**A. ILECs Must Be Required To Provide To Competitors Nondiscriminatory And Detailed OSS Information Regarding Loops.**

The Commission has sought comment regarding whether its existing operations support system ("OSS") rules "adequately ensure" that competitors have access to necessary information about loops.<sup>28</sup> CWI concurs with the FCC's tentative conclusion that ILECs must provide requesting competitors with sufficient detailed information about the loop so as to ensure that the competitor is capable of making an informed, independent determination regarding whether the loop is capable of supporting the xDSL equipment it plans to install. CWI believes that the provision of complete OSS information is essential because, as the Commission has acknowledged, the parameters for determining whether a loop is xDSL-compatible is different for differing technologies -- and, further, will continue to evolve as time progresses.<sup>29</sup> The ILEC simply is not, and, moreover, should not be in a position to make that determination for the competing provider.

In addition, CWI again would stress the importance of the adoption of rules that ensure that ILECs do not exploit their positions of incumbency to discriminate against their competitors. Specifically, in this context, the FCC should require that ILECs offer advanced services

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<sup>28</sup> *NPRM* at ¶ 157.

<sup>29</sup> *Id.*

competitors the same access to OSS information as the ILEC provides to its advanced services affiliates. Similarly, CWI supports the Commission's tentative determination that competitive ILECs have access to the same electronic interfaces that are available to ILECs to obtain loop information.<sup>30</sup> And, finally, CWI submits that, given the rapid technological advancements sweeping the industry, ILECs must be required to make available to competitors new information as it becomes available. These rules as proposed in the *NPRM* constitute a vital foundation for the use of xDSL loops to provide competitive advanced services.

**B. The Commission Should Expand ILEC Requirements Regarding Loop Unbundling.**

In the *Memorandum Opinion and Order* portion of this proceeding, the FCC determined that ILECs are obligated to unbundle high-speed data-compatible loops where technically feasible.<sup>31</sup> CWI applauds this action as an excellent first step along the pathway to fully realized competition in the market for advanced services. However, CWI believes that additional strides are needed in order to further the procompetitive goals of the 1996 Act and promote the development and deployment of advanced services technology.

Specifically, CWI supports the Commission's tentative conclusion that, for example, ILECs be required to provide sub-loop unbundling, and, further, to permit competitors to collocate at remote terminals.<sup>32</sup> CWI believes that sub-loop unbundling and remote terminal access are essential elements in the provision by competitive providers of high bandwidth

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<sup>30</sup> *NPRM* at ¶ 158.

<sup>31</sup> *Id.* at ¶ 52.

<sup>32</sup> *Id.* at ¶ 174.

services -- including xDSL based services. As the Commission has recognized, the use of sub-loop elements and access to the remote terminal might be the only means by which competitors can provide xDSL-based services for certain subscribers.<sup>33</sup> In such cases, if the ILEC refuses to allow competitors access at the remote terminal, the competitor effectively will be denied market entry, thereby hindering the development of advanced services capability.

#### **IV. ALL ADVANCED SERVICES SHOULD BE MADE AVAILABLE FOR RESALE.**

The FCC tentatively has concluded that advanced services marketed by ILECs generally to residential or business users, or to Internet service providers, should be deemed subject to the resale obligations of Section 251(c)(4), regardless of their classification as exchange service or exchange access.<sup>34</sup> CWI strongly supports the Commission's conclusion. The paramount importance of ensuring the rapid development and deployment of advanced services in the local markets -- which, it is hoped, will invigorate the growth of competition in the basic exchange markets -- mandates that all advanced services marketed by ILECs (and their affiliates) be made available for Section 251(c)(4) resale.

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<sup>33</sup> *NPRM* at ¶ 174.

<sup>34</sup> *Id.* at ¶ 189.

**V. THE COMMISSION SHOULD NOT AT THIS TIME GRANT THE BOCS INTERLATA RELIEF.**

The Commission has sought comment regarding possible changes in its policies toward modification of LATA boundaries for the purpose of encouraging deployment of advanced telecommunications capability, particularly for use by schools and by subscribers in rural areas.<sup>35</sup> CWI continues to believe that any modification of LATA boundaries, unless for the certain and similar limited purposes already approved by the Commission on a case-by-case basis,<sup>36</sup> is unwarranted at this time and would only increase the incentives of the BOCs to continue their tactics of delay regarding implementation of the market opening provisions of Sections 251 and 271.

CWI submits that the FCC must not lose sight of the critical statutory role played by the interLATA restriction on BOCs.<sup>37</sup> Section 271 establishes the conditions upon which a BOC may provide in-region interLATA services, which includes satisfaction of the obligations of Section 251. Given the vast interexchange markets just waiting for capture by the BOCs (from a BOC perspective), which capture is predicated upon compliance with Section 271, that section is the cardinal statutory incentive for BOC compliance with the local competition obligations of Section 251(c).

Indeed, the importance of Section 271 is such that Congress expressly provided that the section's interLATA restrictions may not be removed until the BOCs have fully implemented its

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<sup>35</sup> NPRM ¶¶ 190-96.

<sup>36</sup> See, e.g., *Petitions for Limited Modifications of LATA Boundaries to Provide Expanded Local Calling Service (ELCS) at Various Locations*, 12 FCC Rcd 10646 (1997); NPRM at ¶ 190.

<sup>37</sup> 47 U.S.C. § 271.

requirements. More expansive modifications of LATA boundaries would needlessly and dangerously undermine Section 271's interLATA prohibitions; CWI would emphasize that there is no feasible way for the FCC to monitor these waivers to ensure that the BOCs and their subscribers do not route voice or other basic traffic over these facilities. The Commission should not permit the BOCs to exploit this important proceeding regarding provision of *advanced services* as a means of evading their statutory responsibilities regarding *basic exchange service*.

Moreover, and significantly, there simply is no need for implementation of the *NPRM*'s various LATA boundary modification proposals at this time -- particularly in light of the policy interests weighing against. As the Commission has recognized, the need for LATA boundary modifications must be measured against the "potential harm from anticompetitive BOC activity."<sup>38</sup> Apart from the requests made by various BOCs that were denied in the *Memorandum Opinion and Order* portion of this proceeding,<sup>39</sup> there currently is little, if any, reason to believe that the plethora of interexchange carriers currently operating all over the country is not effectively serving the advanced services needs of consumers. However, in the event that the FCC does determine that a specific situation must be resolved by a limited boundary modification, it may of course do so, on a case-by-case basis, as it has done so successfully in the past.

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<sup>38</sup> *NPRM* at ¶ 190.

<sup>39</sup> *See, e.g., Id.* at ¶ 12.

### CONCLUSION

Again, CWI affirms the importance of Commission action at this time to encourage and facilitate the development and deployment of advanced telecommunications services throughout the United States. However, the Commission should determine the course of its actions with caution: specifically, the agency must ensure that any rules it adopts to encourage competition in the local advanced services markets do not subvert its admirable goals. Accordingly, while permitting the establishment of ILEC advanced services affiliates might indeed help to effectuate the Commission's goals, the agency must ensure that the implementation of that *procompetitive* plan does not allow the ILECs to engage in even more *anticompetitive* behavior. The structural separation requirements and nondiscrimination rules discussed above represent an excellent opportunity to achieve the former and avoid the latter

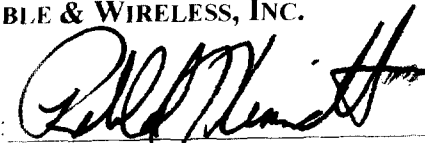
In addition, CWI believes that the Commission's proposals for the establishment of rigorous national standards for collocation and loop requirements will promote to an even greater extent the rapid deployment of advanced services by both incumbents and competitors. The combination of the deregulatory establishment of ILEC advanced services affiliates and more

rigorous obligations on ILECs to open their networks to competitors represents a cohesive, integrated approach to working towards the accomplishment of the local competition mandates of the 1996 Act.

Respectfully submitted,

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September 25, 1998

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